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NAMING THE SEAT OF GOVERNMENT OF THE UNITED STATES.

A LEGISLATIVE PARADOX.

By DR. WILLIAM TINDALL.

(Read before the Society, February 25, 1919.)

The Seat of Government of the United States was established pursuant to the following provision in the eighth section of the first article of the Constitution of the United States, which authorized Congress

“To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding 10 miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.”

In pursuance of this constitutional authorization, Congress passed the act entitled,

“An Act for establishing the temporary and permanent seat of the Government of the United States,”

the first three sections of which are the only portions of that statute which relate, in any way, to the subject of this paper, and are as follows:

“*Section 1.* Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a district of territory, not exceeding ten miles square, to be located as hereafter directed on the river Potomac, at some place between the mouths of the Eastern Branch and Connogochegue, be, and the same is hereby accepted for the permanent seat of the government of the

United States. Provided nevertheless, That the operation of the laws of the state within such district shall not be affected by this acceptance, until the time fixed for the removal of the government thereto, and until Congress shall otherwise by law provide.

"Section 2. And be it further enacted, That the President of the United States be authorized to appoint, and by supplying vacancies happening from refusals to act or other causes, to keep in appointment as long as may be necessary, three commissioners, who, or any two of whom, shall under the direction of the President, survey, and by proper metes and bounds define and limit a district of territory, under the limitations above mentioned; and the district so defined, limited and located, shall be deemed the district accepted by this act, for the permanent seat of the government of the United States.

"Section 3. And be it (further) enacted, That the said commissioners, or any two of them, shall have power to purchase or accept such quantity of land on the eastern side of the said river, within the said district, as the President shall deem proper for the use of the United States, and according to such plans as the President shall approve, the said commissioners, or any two of them, shall, prior to the first Monday in December, in the year of one thousand eight hundred, provide suitable buildings for the accommodation of Congress, and of the President, and for the public offices of the government of the United States." Approved, July 16, 1790.

That statute was not satisfactory, in that it restricted the area of location to "some place between the mouths of the Eastern Branch and Connogocheque," which involved the exclusion from the Seat of Government, of the Town of Alexandria, Virginia, and every part of the Eastern Branch. In order that Alexandria might be embraced in the area of selection, and that the Seat of Government might not be squatted upon the north bank of the Eastern Branch with neither wharf nor other riparian jurisdiction on that stream, Congress passed the act of March 3, 1791, entitled,

“An Act to amend ‘An Act for establishing the temporary and permanent seat of the Government of the United States.’

“That so much of the act entitled, ‘An act for establishing the temporary and permanent seat of the government of the United States,’ as requires that the whole of the district of territory, not exceeding ten miles square, to be located on the river Potomac, for the permanent seat of the government of the United States, shall be located above the mouth of the Eastern Branch, be and is hereby repealed, and that it shall be lawful for the President to make any part of the territory below the said limit, and above the mouth of Hunting Creek, a part of the said district, so as to include a convenient part of the Eastern Branch, and of the lands lying on the lower side thereof, and also the town of Alexandria and the territory so to be included, shall form a part of the district not exceeding ten miles square, for the permanent seat of the government of the United States, in like manner and to all intents and purposes, as if the same had been within the purview of the above recited act.”

The first official act of President Washington toward the establishment of the Seat of Government of the United States, after the passage of the Act of July 16, 1790, was the appointment of three Commissioners, on January 22, 1791, “for surveying the district of territory accepted by the said act for the permanent seat of government of the United States, and for performing such other offices as by law are directed, with full authority for them, or any two of them, to proceed therein according to law.”

The Act of March 3, 1791, enabled the Commissioners to include both Alexandria in Virginia, and both sides of the Eastern Branch within the Seat of Government.

Hunting Creek, which was prescribed by the Act of March 3, 1791, as the farthest point south where the southern limit of the District might be placed, is an estuary of the Potomac River coming into it from the west immediately south of the city of Alexandria,

Virginia. Connogochegue, which was designated by the act of July 16, 1790, as the farthest point north at which the northern limit of the District might be placed, is a small stream which enters the Potomac River from the north near Williamsport, Maryland, about eighty miles above Hunting Creek.

No specific expression in the Statute nor in the Commission under which the Commissioners acted, authorized them to designate the district of territory under their jurisdiction by any other name than "the permanent seat of government of the United States," as it was mentioned in the Constitution and the two acts of Congress; repeated in the Presidential appointments of the Commissioners, and as again repeated by the President in his proclamation of March 30, 1791, under which the Commissioners made their second and final survey.

The eighth of September 1791, was a busy day for the Commissioners, who were in consultation with Thomas Jefferson, then Secretary of State, and James Madison, at Georgetown. Jefferson wrote about it that the Commissioners "having deliberated on every article contained in *our* paper, and preadmonished that they should decide freely on their *own* view of things, concurred unanimously on, I believe, every point with that which had been thought best in Philadelphia." From which it may fairly be inferred that the naming of the Seat of Government, which was one of the results of that conference, did not solely rest with the Commissioners.

The result in question was communicated by the Commissioners, to Major Charles Pierre L'Enfant at Philadelphia as follows:

"We have agreed that the Federal District shall be called 'The Territory of Columbia,' and the Federal City, 'The City of Washington.' The title of the

map will, therefore, be 'A map of the City of Washington in the Territory of Columbia.' In the same letter the Commissioners informed Major L'Enfant that the streets of the Federal City had been named by numbers and letters respectively.

Until February 21, 1871, that action was the only official authority for alluding to the part of the Seat of Government which that Commission had subdivided into urban squares, lots, streets, avenues, alleys, etc., as "The City of Washington." On that date an act of Congress was approved, which directed that

"that *portion of said District* included within the present limits of the City of Washington shall continue to be known as the City of Washington, and that portion of said District within the limits of the City of Georgetown, shall continue to be known as the City of Georgetown." (16 Stat. 428.)

Prior to the Act of February 21, 1871, Congress passed several statutes constituting the *inhabitants* of the Federal City a body corporate and politic by the name of the City of Washington, but did not in any of those laws prescribe that the *territory* within that part of the seat of government should be so named. Hence the act of February 21, 1871, was the first *statutory* naming of the City of Washington.

The action of the Commissioners in naming the Seat of Government "The Territory of Columbia," had no more valid ground of authority than the naming by them of the City of Washington unless such authority might be inferred from the direction contained in Section 2 of the act of July 16, 1790, authorizing those Commissioners to "by proper metes and bounds *define* and limit a district of territory"; but unless the word "define" meant then a great deal more than is commonly ascribed to it, it did not imply the right to give the Seat of Government a name.

The Commissioners are also amenable to criticism for naming the land which they obtained and subdivided into highways, reservations, and lots, "the City of Washington," as the third section of the act of July 16, 1790, only authorized them to purchase or accept such quantity of land, and to provide suitable buildings for the *accommodation of Congress and offices of government* "according to such plans as the President shall approve." Hence, it is difficult to avoid the impression that the erecting and naming of a city on an indefinite and restricted grant of authority to make "plans," was stretching interpretation to the elastic limit. The statute contains no instruction to lay out a city, but only contemplates the acquiring of land for the "*use of the United States*," obviously intending that the United States should not enter into entangling association with local private property interests, as it did in taking title to streets bordered by private lots.

Out of the omission of the Commissioners to strictly interpret that statute, and provide a separate and exclusive reservation upon which to place all the national establishments located at the Seat of Government, has developed substantially all of the contention about the relative amounts which should be contributed by the United States, and by the owners of private property here, for local municipal expenses, which is such an incitement to economic debate on the part of some of our law-makers in the National forum, who regard those who do business or own real estate or any other thing of value in the District of Columbia, as profiteers who pays too little for the municipal development and care of the National Capital, and which is on the contrary an inspiration to discussion by those who claim that private property pays proportionately too much on that account.

Furthermore, to that intrication of local civic and

property interests, is due the recurrent agitation for local municipal suffrage. The Gordian impediment to the harmonious participation of private residential and property interests, in the conduct of the municipal government, appears to be the impracticability of determining to the satisfaction of Congress where the financial responsibility of the government and of private property ownership should begin and end; and which of these interests should be vested with the *balance* of municipal power; as one or the other *must dominate* when their aims conflict; or to satisfy Congress that the Government which is *permanently* here and for whom the capital was primarily established, should hand over to private interests which are *incidentally* here, a part of the Congressional responsibility over which it is required by the Constitution to exercise exclusive legislation. The fifty-fifty problem whose solution made Solomon famous, is rudimentary compared to it. It is strange that such a radical isolationist as George Washington, who gave us felicitous warning against extangling alliances, should have fostered such a complicated condition in connection with one of his most favored national projects.

But if Congress should desire to relieve itself of the complicated administration which this dual property interest involves, it is still feasible, although at enormous cost, to condemn for exclusive occupancy by the general government, all the land south of H or K street north, and then let the owners of real property in the remainder of the District of Columbia manage it by any form of local government they prefer, and meet the expense incident to that form of government, by the taxation of their property and other fiscal impositions, or for the United States to purchase all private realty in the District and lease it to private tenants. In these days when billions of expenditure are common, the three

fourths of a billion which such a purchase would involve would not endanger the national credit, while the rental receipts would so far exceed the interest charge on a bond issue for the purpose, that the United States would derive a large net income from that source. As an alternative of incurring such expense, with the questionable relief it might afford, the Government of the United States has the recourse of moving the seat of government to some site where it could acquire the needful territory at less cost, and thus obviate the agitation for municipal suffrage which raises embarrassing problems of jurisdiction, and derives its most tenable argument from the present dual ownership of real property in the district of Columbia. It is the possibility that the difficulty of finding a way to reconcile the fundamental policy of exclusive authority over the Seat of Government which was obviously the purpose of the constitutional provision for the establishment of the National Capital, with the color of right for local suffrage derivable from the right of private ownership of land, may compel Congress to seek relief from its perplexity by moving the seat of government to some other and more central locality, that invests the agitation for such suffrage with sinister potentiality to the private interests now centered here.

Nevertheless, it is indisputable that very few members of Congress, have such a knowledge of the relation of the District of Columbia to the general government as is necessary to enable them to act with intelligent understanding of many District matters upon which Congress does not hesitate to legislate. It would therefore be beneficial to both Congress and the District, if the appointment or election of a delegate, one for each house, who would have the right to address the body to which he belonged, whenever a matter affecting the District might be under discussion, should be

authorized. The Delegate who was elected April 20, 1871, and reëlected on October 8, 1872, to represent the District of Columbia in the House of Representatives, who had the same rights and privileges which pertained to Delegates from the territories, was a very serviceable factor in obtaining favorable action where municipal interests were involved in matters before Congress from his first election until March 4, 1875, when his second term expired, and the office was abolished pursuant to a provision in the act of Congress of June 20, 1874, which repealed the act of February 21, 1871.

The bills looking to the acquirement of a Seat of Government which were introduced and discussed in the Congress of the Revolution, contemplated the procurement by the United States of the right of the soil within the selected area, that is, that the United States should own the entire seat of government, in order that it might have no administrative association with local property interests.

If the founders of the Constitution, or the Congress which passed the acts of July 16, 1790, and March 3, 1791, had adopted that policy, the management of the local affairs at the National Capital might have been conducted much more simply. But we should have been thus deprived of the contemplation and service of that peculiar and indispensable implement of local municipal influence here, known as the Citizens' Association, whose origin was based on the homely maxim that "The crying child gets the pie!" We should all also have been boarders or ground renters with no occasion to impair our slumbers with aspirations for local civic nor national prestige, by striving to become members of Congress, the applause of a listening Senate to command; to be Warwicks in Presidential nominating conventions; or as members of a local legislative body, to have at our beck a subservient entourage of Ward contractors.

At this stage of this discussion, the Seat of Government is under full sail as "The Territory of Columbia," if we admit that the Commissioners appointed by President Washington had the right to name it other than "The permanent seat of Government."

When the Seat of Government was established two towns named Alexandria and Georgetown, respectively were located on its site. They contained a little more than 2,700 residents each, and each covered about 500 acres. Two subdivisions named Carrollsburg and Hamburg respectively, were nominally there, and appeared on the land records at Marlboro, Maryland, but had no corporeal character. Carrollsburg was on the northern bank of the Eastern Branch east of Arsenal Point. It contained one hundred and sixty acres subdivided into two hundred and sixty-eight lots, under a deed of trust running in the name of Charles Carroll, Junior. Hamburg or Funkstown fronted on the Potomac near Twenty-fourth Street, west, at the mouth of the Tiber or Goose Creek, contained one hundred and twenty acres, divided into two hundred and eighty-seven lots by its owner Jacob Funk.

The District was divided into two counties by an act of Congress approved February 27, 1801. The portion derived from Virginia was named the county of Alexandria, and the portion from Maryland, including the islands in the Potomac River, within the District, was named the county of Washington; but pursuant to an act of Congress of July 9, 1846, and with the assent of the people of the county and town of Alexandria, at an election on the first and second days of September, 1846, by a *viva voce* vote of 763 for retrocession to Virginia and 222 against it, President Polk, by proclamation of September 7, 1846, gave notice that the portion derived from the State of Virginia was re-ceded to that State. The District was thereby reduced to its present area of 69.245 square miles.

The portion of the district outside of Georgetown, Alexandria and the section embraced in what was originally named by the first Commissioners "the City of Washington," was governed immediately by a body of Justices of the peace, named administratively the Justices of the Levy Court.

The first statutory mention of the name "District of Columbia" in an act of Congress, is in the title, but not in the body, of "An act authorizing a loan for the use of the city of Washington, in the District of Columbia, and for other purposes therein mentioned," approved May 6, 1796; but a previous statutory use of the name appears in the fourth section of the act of the Maryland legislature, approved December 28, 1793, entitled "A further supplement to the act concerning the Territory of Columbia and the city of Washington." The seat of government is mentioned in at least one act of Congress as the Territory of Columbia and the District of Columbia. indiscriminately. (2 Stats., 193 and 194.)

The territory at the seat of government is referred to in a number of subsequent statutes as "the District of Columbia," but it was not until February 21, 1871, that Congress directly legislated on the subject of naming it, which it did in the act of that date, entitled "An act to provide a government for the District of Columbia," as follows:

"That all that part of the territory of the United States included within the limits of the District of Columbia be, and the same is hereby, created *into a government* by the name of the District of Columbia, by which name it is hereby constituted a body corporate *for municipal purposes*." (16 Stats. 419.)

It will be noted that this statute does not name it "The District of Columbia" as the designation of the seat of government; but only created it into a local *government* for *municipal purposes*, by that name.

This act omitted also to define the limits to which it referred. As, therefore, the territory within the limits of the Seat of Government had not been definitely name the District of Columbia by law, but had only been created a municipal government by that name, Congress again legislated on the subject, in the act entitled "An act providing a permanent form of government for the District of Columbia," approved June 11, 1878, as follows:

"That all the territory which was ceded by the State of Maryland to the Congress of the United States, for the permanent seat of government of the United States, shall continue to be designated as the District of Columbia." (20 Stats. 102.)

In this latter act Congress definitely indicates the territory it intends to name, but overlooked the fact that there was nothing to *continue* but the government by that name, which it had created by the act of February 21, 1871.

But conceding that the act of June 11, 1878, gave us by *necessary implication* a statutory name "The District of Columbia," for the territory ceded to the United States for "the permanent Seat of Government," the naming of the City of Washington, is still involved in complications.

Congress, upon the recommendation of the Commissioners of the District of Columbia, passed the act approved February 11, 1895, changing the name of Georgetown, which provides among other things that

"all that part of the District of Columbia embraced within the bounds and constituting the city of Georgetown, as referred to in said acts of February twenty-first, eighteen hundred and seventy-one, and June twentieth, eighteen hundred and seventy-four, shall no longer be known by the name and title in law of the city of Georgetown, but the name shall be known as and shall constitute a part of the city of Washington, the *Federal Capital*."

This statute makes the city of Washington, but *not* the District of Columbia, "the Federal Capital." Its vital defect is in its omission to define what it means by the use of the words "the Federal Capital." If its effect is to establish the city of Washington as the *capital of the United States*, the large portion of the seat of government outside of the City of Washington is not a part of that Capital, and the name "The District of Columbia" is a mere geographical designation of the whole area of the territory acquired as the seat of government, similar to the use of the names United States, North America, Europe, etc., with relation to the cities within their borders, but not the name of "the Federal Capital."

If the designation "the Seat of Government" is synonymous with the name "the Federal Capital," the city of Washington, but not "the District of Columbia" and has been the "Seat of Government" ever since February 11, 1895.

At the risk of incurring the charge of lese majesty, I submit that if Congress did not mean by that statute, to name the City of Washington, the Capital of the United States, it made a very ambiguous use of the English language.

In brief it appears that Congress sought by the acts of February 21, 1871, and June 11, 1878, to name the territory at the seat of government of the United States, "The District of Columbia," and having by the latter act presumptively done so, then apparently proceeded to spill the fat in the fire by enacting the statute approved February 11, 1895, which designates only a part of the Seat of Government as "The Federal Capital," and omits to define the nature of the capital it thus creates. It leaves those inhabitants of the District of Columbia who do not reside within the limits of former Georgetown and the City of Washington non residents

of "The Federal Capital," whatever "The Federal Capital" is.

To recapitulate it appears:

First. The Commissioners appointed in 1791, who named the Seat of Government "The Territory of Columbia" were without specific authority of law to do so.

Second. Congress by repeatedly alluding to it as the District of Columbia, obviously indicated that it did not regard the name "The Territory of Columbia," so given by the Commissioners, as authoritative nor permanent.

Third. Congress apparently intended by the act of February 21, 1871, to name it "The District of Columbia," but did not define what were the limits of the territory to which it attempted to give a name.

Furthermore it did not by that statute declare that "the District of Columbia" was the name of the Seat of Government nor the name of the territorial area at the seat of government. It only created a *government for municipal purposes*, by that name.

Fourth. Congress was presumably in doubt that the action taken in that respect by the act of February 21, 1871, was sufficiently explicit as giving a name to the Seat of Government, and again legislated on the subject by the act of June 11, 1878, by directing "that all the territory which *was ceded by the state of Maryland* to the Congress of the United States, for the permanent seat of government of the United States, shall *continue* to be designated as the District of Columbia." Although all there was to continue was the *municipal government* known as "the District of Columbia," as the *territory* in the seat of government had not been designated by statute by that name; hence, although this act of June 11, 1878, definitely indicates the territory to which it refers, it rather weakens than strengthens its action by the use of the word "continue."

Nevertheless conceding that the territory embraced in the Seat of Government was by necessary implication named the District of Columbia by the act of June 11, 1878, Congress opened Pandora's Box by passing the act of February 11, 1895, which designates the City of Washington, "The Federal Capital." There is an erroneous impression that the name the city of Washington was abolished by the statute of February 21, 1871, whereas that name was *specifically perpetuated*, by that act, as a local designation of the territory which had been named the City of Washington by the Commissioners in September 1791. Neither did Congress by any other act discontinue that name as a territorial distinction. Neither does Congress by any statute define what it means by the use of the words "Federal Capital." But whatever the "Federal Capital" is, the City of Washington is unquestionably it!

If Congress meant that those words "the Federal Capital" should be synonymous with "The Seat of Government" it should have so stated definitely; but it leaves the poor thing wandering around in the imagination with nothing on but its name.

Sixth and finally. Conceding, as we have, that Congress by the act of June 11, 1878, named the territory embraced in the seat of Government the "District of Columbia," no subsequent act has changed that status as affecting the entire area of the Seat of Government: but Congress in naming a part of the Seat of Government "the Federal Capital," which it constituted by the Consolidation of ancient Georgetown* with the city of Washington under the latter name, has left the people who reside in the portion of the Seat of Government, outside of that city, mere District of Columbians; while the residents of the rest of the District have a double civic citizenship as residents both of the District of Columbia, and of the "Federal Capital."

Congress has therefore sought to name the district

of territory, accepted under the acts of July 16, 1790 and March 3, 1791:

First: the permanent seat of government of the United States;

Second: The District of Columbia; but not "the Federal Capital";

Third: The County of Washington; but not "the Federal Capital";

Fourth: A portion of these three, the "City of Washington, The Federal Capital."

The first three are territorially coextensive. Hence one may be at the same time a resident of the District of Columbia; of the seat of government, and of the County of Washington; but one cannot be a statutory resident of "the Federal Capital" who does not reside in the City of Washington, whatever that is.

In my judgment the legislative paradox under discussion may best be solved by the enactment of a law prescribing "that all the territory which was ceded to the Congress of the United States by the State of Maryland, for the Seat of Government of the United States, is the seat of Government of the United States of America, and is hereby named "The District of Columbia"; and that "So much of the Act of Congress, entitled An Act changing the name of Georgetown, in the District of Columbia, and for other purposes," approved, February 11, 1895, as prescribes that "all that part of the District of Columbia embraced within the bounds and constituting the City of Georgetown, as referred to in said Acts of February twenty-first, eighteen hundred and seventy-one and June twentieth, eighteen hundred and seventy-four, shall no longer be known by the name and title in law of the City of Georgetown, but the same shall be known as and shall constitute a part of the City of Washington, the Federal Capital," is hereby amended by eliminating the words "the Federal Capital" which appear therein.